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No. 71-[illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1971

FREDERIC C. WILCOTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-523

FREDERIC C. WILHOIT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the Superior Court for the District of Columbia, petitioner, then the proprietor of a large bookstore specializing in erotic publications, was found guilty of selling an obscene book ("The Teeny Suckers") to an undercover police officer, in violation of 22 D.C. Code (Supp. III, 1970) 2001(a)(1)(A). He was sentenced to one year in prison and a $3,000 fine. The District of Columbia Court of Appeals affirmed (Pet. 3a-8a).

Petitioner contends that the First Amendment protects the purveying of obscene material if sold to adults without pandering. He also contends that the courts below erred in finding the book to be obscene based upon an examination of the book itself without the introduction of other evidence.

This Court has held that the distribution of obscene material for commercial purposes to adults is not protected by the First Amendment. *United States* v. *Reidel*, 402 U.S. 351. Similarly the courts of appeals have uniformly held that, with respect to hard core obscenity such as the trial judge found was involved here, the government need not introduce any extrinsic evidence on the issue of national community standards or appeal to prurient interests, but may rely on the obscene material itself. See, *e.g.*, in addition to the cases cited at Pet. 6a, *United States* v. *Wild*, 422 F.2d 34 (C.A. 2), certiorari denied, 402 U.S. 986.

It is there fore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

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